

Before the
Federal Communications Commission
Washington D.C. 20554

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| In the Matter of |) | |
| |) | |
| Application by |) | |
| Qwest Communications International, Inc. |) | |
| For Authorization to Provide |) | |
| In-Region, InterLATA Services |) | WC Docket No. 03-90 |
| In Minnesota |) | |

REPLY COMMENTS OF WORLDCOM

WorldCom, Inc., D/B/A MCI ("MCI") hereby files reply comments in the above-referenced docket regarding Qwest's section 271 application for Minnesota. MCI urges the Commission to reject Qwest's application for the reasons stated below.

I. QWEST'S OSS CONTINUES TO BE DEFICIENT.

Little has changed in recent weeks with respect to the OSS problems that MCI delineated in response to Qwest's prior section 271 applications and in its initial comments on the present application. In particular, MCI continues to experience a reject rate of over 50% on its orders. That reject rate is not atypical. The data that Qwest itself submits shows that most CLECs submitting a substantial volume of orders are experiencing high reject rates.¹ As AT&T explains, the overall reject rate for CLECs submitting orders via EDI has been approximately 50% in recent months – an increase in the reject rate as compared with orders placed during

¹ Letter to Marlene H. Dortch, FCC, from Melissa E. Newman, Qwest, WC Docket No. 03-90, filed April 22, 2003 (Qwest April 22A *ex parte*), Att. A.

2002.² While two CLECs experienced relatively low reject rates, MCI has previously discussed the particularities of those CLECs' ordering processes.³

Qwest claims that part of the increase in reject rates in recent months was due to MCI's high reject rate in January and February. Qwest implies that MCI was to blame for its high reject rate, and that, in any event, the reject rate is now at an acceptable level. But MCI has previously detailed at length the many Qwest problems that led to rejects in January through March:

Qwest's failure to document the location of telephone numbers on single line CSRs, Qwest's failure to document that multi-line CSRs would be out-of-sequence, Qwest's failure to include ten digit forward-to numbers on CSRs when such numbers were required on orders, Qwest's provision of inaccurate information regarding use of customer codes obtained from completion notices, and Qwest's failure in a number of other respects. These issues were Qwest's fault, not MCI's, although MCI bore the cost of reprogramming its interfaces to account for these Qwest-caused difficulties. But that reprogramming has not resolved all of the problems. While MCI's reject rate "declined substantially" after this reprogramming, as Qwest states,⁴ Qwest's implication that the reject rate is now acceptable is wrong. The reject rate declined from near 100% when MCI entered the market at the conclusion of testing in January to somewhere above 50% today – a rate that is far too high and far higher than MCI experiences in other markets.

On May 2, MCI implemented a change to its systems to begin using addresses from Qwest's PREMIS database rather than its CRIS database. Qwest has previously indicated that

² Qwest April 22A *ex parte*. See also Letter to Marlene H. Dortch, FCC, from Richard E. Young, Sidley & Austin, WC Docket No. 03-90, filed April 29, 2003 (AT&T April 29 *ex parte*); Letter to Marlene H. Dortch, FCC, from Richard E. Young, Sidley & Austin, WC Docket No. 03-90, filed April 30, 2003 (AT&T April 30 *ex parte*).

³ See, e.g., WorldCom Reply Comments, *In the Matter of Qwest Application to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, filed Feb. 27, 2003, at 2; Letter to Marlene H. Dortch, FCC, from Lori Wright, WorldCom, *In the Matter of Qwest Application to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, filed March 24, 2003 (WorldCom March 24 *ex parte*).

⁴ See Qwest April 22A *ex parte*.

many of the rejects that MCI is now experiencing resulted from its decision to use addresses from the CRIS database. If that is correct, MCI's recent change should fix the problem. MCI hopes that is so, but it is too soon to determine the impact of the May 2 fix. MCI will keep the Commission apprised of its impact. In addition, as MCI explained in its Comments, it intends to begin using release 12.0 some time in June, including functionality for migrate-by-telephone number and industry standard migrate-as-specified. MCI hoped that in the interim Qwest would provide some evidence that release 12.0 is working, but Qwest has not yet done so. This may be because CLECs have been reluctant to date to move immediately to 12.0 given the past history of problems with Qwest releases. But Qwest has not even provided test evidence that release 12.0 works, and, in fact, has released several defect notices suggesting problems with the release. In any event, the Commission should continue to monitor any evidence of the effectiveness of this release.

Indeed, the Department of Justice expressed concern about the recent increase in Qwest's reject rate and suggested the Commission continue to monitor this rate and explanations for it.⁵ At present, Qwest has not yet provided an acceptable explanation, and there is need for continued monitoring to ensure that Qwest has made, and continues to make, the changes needed to reduce the reject rate.

The Department of Justice also states that the Commission should examine Qwest's failure to provide billing completion notifications ("BCNs"), and whether this results from a lack of interest on CLECs' part, or from a failure in Qwest's process.⁶ The answer is the latter. MCI has previously described its interest in receiving BCNs as a stand-alone notifier,⁷ but Qwest's

⁵ Evaluation of the Department of Justice, *In the Matter of Application by Qwest to Provide In-Region, InterLATA Services in the State of Minnesota*, WC Docket No. 03-90, May 2, 2003 (DOJ Eval.), at 2 n.5.

⁶ DOJ Eval. at 13, n.24.

⁷ See WorldCom March 24 *ex parte* at 9-10.

current process of notifying CLECs of billing completion is inadequate. Qwest will now notify CLECs of billing completion but only as part of a larger notification process that includes a mishmash of notifications -- most of which are completion notices for each of Qwest's internal service orders and unnecessary for the CLECs -- and that makes it difficult and costly to extract the BCN information. MCI is not using this process because of the difficulties with it, not because BCNs are unimportant. Indeed, BCNs are particularly critical in Qwest because, according to Qwest, they contain the customer code information that must be included on subsequent orders to ensure they are not rejected. A change request for adequate BCNs is pending.

In addition it appears that another new problem has surfaced. Several MCI customers appear not to be receiving MCI branding when they call directory or operator assistance. We have logged a trouble ticket for this problem, but the preliminary response received from Qwest is perplexing. Qwest's Trouble Handling Escalation Team is responding that MCI branding cannot be placed on "resold lines," which is an incorrect response because WorldCom uses UNE-P. Qwest's Account Team blames these incorrect responses on inadequate training for the trouble handling team, but it has not yet provided any other explanation for this problem and has encouraged MCI to keep opening trouble tickets and referring these problems to the Account Team for resolution. Despite this heightened support, the problem has not been corrected, a root cause has not yet been identified, and we continue to receive the "resold line" response from the trouble handling team. We are continuing to investigate this matter but believe that it once again demonstrates the deficiencies in Qwest's processes and Qwest's lack of preparation for true competition.

II. QWEST REFUSES TO REMEDY ITS DISCRIMINATORY CONDUCT IN CONNECTION WITH THE SECRET DEALS

Given this Commission's historical deference to state commission findings in section 271 proceedings, and its specific deference to state commissions in the context of Qwest's secret deals, Qwest's Minnesota section 271 application should be denied. Three of the four Minnesota Public Utility Commission (MN PUC) commissioners recommend rejection of this application because Qwest refuses to accept the remedy plan designed to restore effective local competition in Minnesota. Qwest's refusal to accept the remedy plan results in ongoing discrimination because competitors in Minnesota have not yet been compensated for the discounted pricing and other provisions made available only to the secret deals CLECs. This Commission therefore cannot rely as it did in prior Qwest section 271 orders on the absence of "ongoing discrimination" as a basis on which to dispose of the secret deals issue and approve the application.⁸

Indeed MN PUC Commissioners Scott and Johnson state that, "Qwest's denial of wrongdoing, combined with Qwest's failure to implement the ordered remedy, makes Qwest's conduct very much in the PRESENT, not the past. This behavior is clear evidence that Qwest is not yet committed to opening its markets to competition."⁹ MN PUC Commissioner Reha similarly stated that, "[u]ntil Qwest implements the restitution ordered it has not leveled the competition field and has not fully addressed my concerns related to the public interest."¹⁰

⁸ See Memorandum Opinion and Order, *In the Matter of Qwest Application for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah Washington, and Wyoming*, WC Docket No. 02-314, (Qwest 9-State Order) ¶¶ 486-87.

⁹ See MN PUC Comments, *In the Matter of Qwest Application for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, April 17, 2003, Att. 3 (Separate Comments of Commissioners Gregory Scott and R. Marshall Johnson Regarding Checklist Items #2, #14, and Public Interest Aspects of Qwest's Section 271 Filing) at 36. Commissioners Scott and Johnson also emphasize the ALJ's finding that Qwest did not demonstrate that it provides non-discriminatory access to network elements because of Qwest's reliance on UNE-Star, which the ALJ found does not meet the standards of UNE-P, particularly with regard to billing accuracy. *Id.* at 32.

¹⁰ See MN PUC Comments, *In the Matter of Qwest Application for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, April 17, 2003, Att. 2 (Separate Comments of Commissioner Phyllis A. Reha Regarding Checklist Items #2, #14, and Public Interest Aspects of Qwest's Section 271 Filing) at 28.

These commissioners correctly point out that this Commission cannot simply claim that Qwest's misconduct is a case of past discrimination that is irrelevant to the section 271 determination. Rather Qwest's secret deals harmed the competitive marketplace in Minnesota by providing discounts to select CLECs that in turn were able to offer potential customers more attractive pricing packages. The MN PUC rightly concluded that, "the direct and inevitable result of such anti-competitive behavior is that customers have been deprived of the benefit of a marketplace fairly and freely open to competition."¹¹ Qwest could alleviate some of the detrimental effects of this discriminatory treatment by complying with the MN PUC's remedies and allowing CLECs to gain discounts that could then be passed on to customers. In refusing to do so, the discrimination continues.

The views of the three MN commissioners favoring rejection of the Minnesota application should not be taken lightly. The MN PUC engaged in a secret deals investigation that was unlike any other state secret-deals investigation in its comprehensiveness. And following this thorough investigation, the MN PUC developed a remedy plan to level the playing field. Although Qwest acknowledges in its brief the "extraordinary dedication and creativity" of the MN PUC in evaluating Qwest's compliance with section 271,¹² it refuses to comply with the remedies that resulted from just such "dedication and creativity." This Commission should not similarly disregard the MN PUC's thorough investigation and well-reasoned remedy plan. To do so would be inconsistent with this Commission's own findings in the *Qwest 9-State Order* that the "state actions with respect to the unfiled agreements are important to consider and are

¹¹ See Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements, Order Assessing Penalties, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197 (Feb. 28, 2003) at 9-10.

¹² Qwest Brief, *In the Matter of Qwest Application for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, filed March 28, 2003, at 4.

positive ones that will promote competition and serve the public interest by allowing competitors to opt-in to previously unfiled agreements.”¹³

This Commission also cannot rely on its prior conclusion in the *Qwest 9-State Order* that Qwest cured any violations on a going-forward basis by disclosing or terminating its written agreements, given the MN PUC’s finding that Qwest entered into and failed to file a discriminatory *oral* agreement. Nor can this Commission continue to rely on the existence of the oral agreement being “in dispute.”¹⁴ Rather this Commission should adhere to its statement in the *Qwest 9-State Order* that “[s]tates are best equipped to resolve fact-specific issues as they arise, such as whether or not an oral agreement exists.”¹⁵ Here, the MN PUC found that just such an oral agreement existed. Yet Qwest has refused to provide remediation for this agreement or any other agreements. The MN PUC’s recommendation that Qwest’s application be denied is therefore utterly reasonable, and should be deferred to accordingly.

Qwest’s refusal to accept the remedy structure set forth by the MN PUC is based in part on Qwest’s assertion that the MN PUC lacks the authority to assess the particular remedies and that federal law also does not authorize such remedies.¹⁶ Thus Qwest is not only challenging the amount of a fine (which it is also doing) but is contesting the MN PUC’s authority to craft a remedy that places competitors on a level playing field. Specifically, Qwest asserts that neither federal nor state law authorizes the MN PUC’s opt-in remedies that would make available to CLECs provisions included in the unfiled agreements and would provide CLECs a 10 percent retroactive discount on products and services purchased over a time-period in line with what was

¹³ Qwest 9-State Order ¶ 498.

¹⁴ Qwest 9-State Order ¶ 491.

¹⁵ Qwest 9-State Order ¶ 491.

¹⁶ See Qwest Motion for Reconsideration, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197 (Qwest Motion for Reconsideration), March 10, 2003.

provided to two secret deals carriers, Eschelon and McLeod.¹⁷ But these assertions are unfounded¹⁸ and indicate Qwest's unwillingness to agree to any plan that will directly benefit competitors who were harmed by Qwest's secret deals in Minnesota.

It bears emphasizing that Qwest has been provided clear direction on what it needs to do in order to gain the approval of the MN PUC. This is not a situation where the test that the BOC must meet in order to gain section 271 approval is unclear or seemingly unending. Here Qwest has engaged in unlawful and discriminatory behavior, has been told how to remedy such conduct, yet has refused to comply at the same time it is seeking long-distance authority from this Commission. This Commission should not grant Qwest section 271 authorization in Minnesota until Qwest complies with the clear direction from the MN PUC.

For the reasons described herein, the Commission should reject Qwest's section 271 application for Minnesota.

Respectfully submitted,

____/s/_____

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¹⁷ *Id.*

¹⁸ Qwest's assertions are meritless for the reasons described in AT&T's Answer to Qwest's Motion for Reconsideration, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197, filed March 20, 2003. Minnesota law specifically provides that the payment of a penalty does not preclude the use of other enforcement provisions in connection with violations for which a penalty was assessed.

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May 8, 2003

Certificate of Service

I, Lori Wright, hereby certify, that a true and correct copy of these reply comments in WC Docket No. 03-90 was served electronically on the following people on this 8th day of May, 2003:

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